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BEFORE THE ARIZONA CORPORATION COMMISSIONCOMMISSIONERS

2010 JUN 25 P 4:01

Arizona Corporation Commission

KRISTIN K. MAYES, Chairman

GARY PIERCE

PAUL NEWMAN

SANDRA D. KENNEDY

BOB STUMP

AZ CORP COMMISSION
DOCKET CONTROL

DOCKETED

JUN 25 2010

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IN THE MATTER OF THE APPLICATION
OF SOLARCITY FOR A
DETERMINATION THAT WHEN IT
PROVIDES SOLAR SERVICE TO
ARIZONA SCHOOLS, GOVERNMENTS,
AND NON-PROFIT ENTITIES IT IS NOT
ACTING AS A PUBLIC SERVICE
CORPORATION PURSUANT TO ART. 15,
SECTION 2 OF THE ARIZONA
CONSTITUTION

DOCKET NO. E-20690A-09-0346

SUNPOWER CORPORATION'S
COMMENTS ON MAYES
PROPOSED AMENDMENT #1
AND PIERCE PROPOSED
AMENDMENT #1

I.

INTRODUCTION

SunPower Corporation ("SunPower") hereby submits its Comments on Mayes Proposed Amendment #1 and Pierce Proposed Amendment #1, as filed in the above-captioned and above-docketed proceeding on June 17, 2010 and June 15, 2010, respectively.¹ In that regard, SunPower (i) appreciates the thoughtful time and effort reflected in the preparation of each Amendment, and (ii) supports the non-jurisdictional determination that each Amendment would produce, based upon the evidentiary record in the instant proceeding and pertinent "public interest" considerations.

¹ In his June 15, 2010 letter to "Interested Stakeholders," Commissioner Pierce requested written input regarding Pierce Amendment #1. SunPower's Comments with regard to Pierce Amendment #1 are submitted in response to Commissioner Pierce's invitation. In addition, SunPower concluded that it might also be constructive for it to submit written comments on Mayes Amendment #1 in advance of the forthcoming June 30, 2010 Open Meeting, in order to provide feedback similar to that requested by Commissioner Pierce in relation to his amendment. In so doing, SunPower does not intend to be presumptuous with regard to Mayes Amendment #1, and hopes that its Comments and suggested revisions will be received as constructive.

1 SunPower does have certain minor (but important) revisions to each Amendment
2 which it desires to suggest for consideration by the sponsors of the Amendments, and the
3 other members of the Commission. Each of these suggested revisions are identified and
4 discussed below.

5 II.

6 SUGGESTED REVISIONS TO MAYES

7 PROPOSED AMENDMENT #1

8 A. Proposed Insertion at Page 31, Line 6.

9 SunPower recommends that the fourth paragraph of this portion of Mayes
10 Amendment #1 be revised as follows:

11 “If SolarCity were to broaden its business activities by
12 providing continuous service to customers, thus severing
13 linkages between a utility and its customers, ~~or extending its~~
14 ~~use of SSAs to customers other than schools, government or~~
15 ~~other non-profit entities,~~ this would weigh in favor of regulation
16 as it would suggest the Company’s primary purpose was the
17 sale of electricity. However, SolarCity’s current core business,
18 namely provision of varied services and promotion of
19 distributed solar systems, is not such to conclude that it is
20 primarily concerned with selling electricity.”

21 SunPower is concerned that the language SunPower proposes for deletion could
22 otherwise be construed by third-party financing entities and others as reflection of a bias or
23 predisposition upon the part of the Commission to regulate solar service providers and
24 third-party financing entities who enter into transactional arrangements under SSAs or
25 PPAs with “for-profit” customers. SunPower believes that the suggestion of such a bias or
26 predisposition by Chairman Mayes is not intended. Nor, would the record in the instant
27 proceeding support the same, when examined in relation to the requirements of due process
28 and substantial evidence.

Moreover, the language that SunPower suggests be deleted is not essential to the “continuous service to customers” and “severing linkage between a utility and its customers” points which are discussed in this paragraph and the immediately preceding paragraph of Mayes Amendment #1. To the contrary, the tax status of the customers, and whether or not the customers are “non-profit” or “for-profit” has no bearing on these public policy considerations.

Accordingly, and as indicated above, SunPower suggests that the stricken through language in the above quoted fourth paragraph be deleted from Mayes Amendment #1.

B. Proposed Insertion at Page 36, Line 18.

For the same reasons discussed in Section II (A) above of these Comments, SunPower suggests that the first and third paragraphs of this portion of Mayes Amendment No. 1 be revised as follows, respectively:

“Here, SolarCity’s primary business is the design, installation, maintenance and financing of solar equipment. While development and promotion of renewable resources is in the public interest, SolarCity’s activities pursuant to SSAs are not integral to the provision of electricity to the public at large, as SolarCity enables schools, ~~government and other non-profit entities~~ *its customers* to employ customer-sited solar facilities which serve their individual needs and only incidentally provide generation back to the grid.” [Note: proposed substitute language italicized]

* * *

“The public use factor necessarily requires line drawing, otherwise it would inappropriately include or exclude business activities. SolarCity’s design, installation, maintenance and financing of individual customer-sited solar facilities ~~for schools, government and other non-profit entities~~ does not trigger a public use finding where it is not integral to the public at large and only incidentally impacts the public interest in a safe and reliable electric grid.”

SunPower believes that the language deletions and single language substitution suggested above by SunPower do not detract from the analytical thrust or conclusions of either of the above-quoted paragraphs; and, they would tend to remove that potential for perception of the aforementioned jurisdictional bias or predisposition which otherwise might exist.

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III.

SUGGESTED REVISION TO PIERCE

PROPOSED AMENDMENT #1

A. Proposed Insertion at Page 7, Line 7.

SunPower suggests that the following paragraph be deleted in its entirety from
Pierce Amendment #1:

~~“The parties generally agree that SolarCity is not acting as a public service corporation when it uses a lease agreement to design, install, maintain, own and operate solar systems, but that SolarCity would be acting as a public service corporation if it used a PPA to accomplish the same thing. Accordingly, and assuming *arguendo* that the parties are correct that PPAs result in SolarCity being a public service corporation whereas lease agreements do not, another way to formulate the question presented in this Application is: Are SSAs more like PPAs or lease agreements? All three arrangements PPAs, SSAs, and lease agreements functionally accomplish the same thing. SolarCity’s obligations to design, install, maintain, own and operate the solar systems are identical under all three arrangements, and the only distinctions are (1) whether the customer contractually pays a fixed monthly fee or a variable monthly fee and (2) whether the customer or SolarCity contractually owns the electrons upon production.”~~

The statement that

~~“The parties generally agree that SolarCity . . . would be acting as a public service corporation if it used a PPA to accomplish the same thing. . .”~~

is based upon a misunderstanding of the position of the parties in the instant proceeding. Moreover, there is no evidence in the record of the instant proceeding to support a conclusion to the effect that use of a PPA would subject a solar provider to regulation as a public service corporation under Arizona law. Finally, the paragraph here in question would appear to add nothing of substantive importance to that portion of the May 28, 2010 Recommended Opinion and Order it proposes to supplement, which is titled “The Application: SolarCity and SSAs.”

Accordingly, for all of the reasons discussed above, SunPower suggests that the above-quoted paragraph be deleted in its entirety from Pierce Amendment #1.

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IV.
**SUGGESTED ADDITION TO
MAYES AMENDMENT #1 AND
PIERCE AMENDMENT #1**

Both Mayes Amendment #1 and Pierce Amendment #1 propose replacement language for Finding of Fact No. 34 in the ROO, and they propose the same following substitute language:

“Entities that purchase or lease (including the lessor and lessee in such transactions) distributed solar panels to produce electricity for use on their personal property are not public service corporations, as they do not furnish electricity under the Arizona Constitution, Article 15, Section 2.”

This language and conclusion reflect the results of an analysis of the factual circumstances therein referenced vis-à-vis the provisions of Article 15, Section 2 of the Arizona Constitution. Accordingly, SunPower suggests that an additional Conclusion of Law be added to both Mayes Amendment #1 and Pierce Amendment #1 to reflect the aforesaid conclusion as a legal conclusion as well. By so doing, and in the event that Mayes Amendment #1, Pierce Amendment #1 or a combination thereof are ultimately adopted, the Commission would further provide important jurisdictional guidance to all concerned, including the solar panel customer.

Dated this 25th day of June 2010.

Respectfully submitted,


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1 The original and thirteen (13) copies of the
2 foregoing Comments will be filed on
the 25th day of June 2010 with:

3 Docket Control
4 Arizona Corporation Commission
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5 A copy of the foregoing Comments will also be
6 emailed or mailed that same date to:

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